IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.4682 OF 2005
IN
CRIMINAL APPEAL NO.684 OF 2005

The State of Maharashtra. ...Applicant.
Vs.
Indubai M.Chavan and anr. ...Respondents.

Mr.A.S.Gadkari, A.P.P. for the Applicant-State.

Smt.P.U. Badadare i/by P.R.Arjunwadkar for the Respondents.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :10TH JANUARY,2007.

P.C.

1. This is an application filed by the State seeking leave to prefer an appeal against the order of acquittal of the respondents/accused in Sessions Case No.170 of 2003 decided by the III Ad-hoc Asstt. Sessions Judge, Kolhapur vide Judgment and Order dated 24.12.2004. The respondents came to be tried alongwith the original accused No.1 on a charge of committing offence punishable under Sections-307, 504,506 read with 34 of the Indian Penal Code and Section-7(1)(d) of the Prevention of Civil Rights Act. It was the case of the prosecution that the accused have constructed a water tank in the backyard of their house and the water from the said tank used

to flow in the backyard of the house of the complainant. There was a dispute between them giving rise to frequent quarrels. On 2.7.2003, at about 7.00a.m., a quarrel took place between Suryakant Mahapure i.e. the husband of the complainant and the family members of the accused No.1. In the afternoon, at about 2.00p.m., when Suryakant returned home for having his meal and was standing in the backyard of his house, at that time, the accused No.1 abused him and accused Nos. 2 and 3 also came there. It is in the said quarrel that accused No.1 was holding rapi in his hand and threatened Suryakant of dire consequences and assaulted him on his abdomen, chest and neck, because of which, he fell down. The original Accused No.1 ran away from the spot. Suryakant was taken to Government Hospital where he was hospitalised and after he was operated, he was discharged. The learned Trial Court found that the prosecution has proved the case in so far as Accused No.1-Mohan Sahadeo Chavan is concerned and convicted him for offence punishable under Section-307 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default to suffer further rigorous imprisonment for three months and acquitted him from other charges. In so far as the

respondents/original accused Nos. 2 and 3 are concerned, they were acquitted from all charges.

2. The learned A.P.P. submitted that the State has preferred an appeal for enhancement of sentence in so far as original Accused No.1 is concerned and seeks leave to prefer an appeal against the acquittal of original/accused Nos. 2 and 3.

3. It is submitted that inspite of there being evidence on record that all the accused persons in furtherance of their common intention assaulted Suryakant by giving him filthy abuses on caste line, the Trial Court disbelieved the prosecution case and acquitted the respondents/original accused Nos. 2 and 3 which was unwarranted.

4. We have gone through the evidence on record as well as the Judgment and order of the learned Trial Court. The learned Trial Court arrived at a conclusion that the respondents/original accused Nos. 2 and 3 being family members of original accused No.1 have been subsequently impleaded in this case as their presence and participation was not spelt out in the F.I.R. lodged by the wife of the injured Suryakant or his sister who are witnesses to the

incident. We find that the view taken by the Trial Court cannot be said to be perverse and therefore, this is not a fit case where leave can be granted to the State to prefer appeal against the acquittal. Therefore, the application is rejected. As a consequence of which, the Criminal Appeal preferred by the State is dismissed.

(J.N. PATEL, J.)

(R. S. MOHITE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.684 OF 2005

The State of Maharashtra. ...Applicant.
Vs.
Mohan S. Chavan. ..Respondent.

Mr.A.S.Gadkari, A.P.P. for the Applicant-State.

Smt.P.U. Badadare i/by P.R.Arjunwadkar for the Respondents.

CORAM: J.N. PATEL &
R.S. MOHITE, JJ.
DATED :10TH JANUARY,2007.

P.C.

1. This appeal has been preferred by the State impugning the Judgment and order dated 24.12.2004 passed by the III Ad-hoc Asstt.Sessions Judge, Kolhapur in Sessions Case No.170 of 2003, wherein, Mohan Sahadeo Chavan/original accused No.1 came to be tried alongwith co-accused for having committed offence Under Sections-307,504 and 506 read with 34 of the Indian Penal Code and under Section 7(1)(d) of the Prevention of Civil Rights Act. The learned Trial Judge found respondent-original accused No.1 Mohan Sahadeo Chavan guilty of having committed offence under Section 307 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment

for three years and to pay a fine of Rs.1000/-, in default to suffer further rigorous imprisonment for three months and acquitted him from other charges and also co-accused in this case.

2. It is submitted by the learned A.P.P. that considering the nature of weapon used by the assailant, the fact that the injury was caused on vital part of the victim and the fact that P.W.No.8 Dr. Deshmukh has opined that Injury No.1 was grievous and the injuries are caused on the vital part of the body and would certainly caused death of prosecution witness i.e. P.W.No.2. Letting of the respondent with merely a sentence of three years and a fine of Rs.1000/- was not justified. We have examined the reasoning given by the learned Trial Court while considering the quantum of sentence. We found that the Trial Court has taken into consideration factors like respondent-accused No.1 was 42 years old and has three small children depending upon him and also old aged mother. No previous conviction is brought on record. Considering the responsibility of the accused, circumstances of the case and the nature of injuries caused to P.W.No.2 Suryakant Mahapure, it was felt that the sentence of three years rigorous

imprisonment was justified. We find that the discretion used by the Trial Court cannot be said to be unreasonable in the background of the facts of the case and does not call for any interference. Therefore, appeal is dismissed.

(J.N. PATEL, J.)

(R.S.MOHITE, J.)